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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 145

JOSEPH RICE,

Petitioner,

vs.

H. H. ARNOLD, as Superintendent of Miami Springs Country Club

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PETITIONER FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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vs.

H. H. ARNOLD, AS SUPERINTENDENT OF MIAMI SPRINGS COUNTRY CLUB,

Respondent

PETITIONER FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to review a decision of the Supreme Court of the State of Florida affirming a judgment of the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, which said judgment dismissed an alternative writ of mandamus and denied petitioner's motion for a peremptory writ of mandamus against the respondent.

Opinion Below

The opinion of the Supreme Court of Florida has (not) been officially reported and appears at (45 So. (2d) 195) and at pages 14-19 of the record herein.

Jurisdiction

The opinion of the Supreme Court of the State of Florida was filed on the 24th day of March, 1950. (R. 14) The jurisdiction of this Court is invoked under Title 28, United States Code, section 1254.

Summary Statement of Matter Involved

The City of Miami, Florida, owns and operates a golf course known as the Miami Springs Country Club. It is the only such golf facility publicly owned and operated. The respondent is the duly appointed and acting superintendent of the said public golf course and in his official capacity is delegated the power to make and enforce rules and regulations for the use and enjoyment of such facilities by the general public. Prior to April 27, 1949, respondent had promulgated a rule providing that Negro citizens desiring to use such golf facilities could do so only on Monday of each week, the remaining six days of each and every week being reserved for the exclusive use of citizens of non-Negro origin.

On April 27, 1949, a Wednesday, petitioner, a Negro, requested respondent's permission to play the course on that day, which such request was refused pursuant to the adopted rule referred to above. On the 3rd day of June, 1949, petitioner filed in the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County a petition for an alternative writ of mandamus to require respondent to permit him the use of the said golf course upon the same basis and pursuant to the same rules and regulations as such facilities are made available to other citizens. (R. 1) An alternative writ as prayed for

was issued. (R. 3) Respondent thereupon filed his Return and Answer (R. 4), the essence of which was as follows:

A. That the public policy of the State of Florida and particularly of the City of Miami required the segregation of the races in the use of public facilities.

B. That prior to April, 1949, the public golf course had been used exclusively by members of the white or Caucasian race.

C. That on April 11, 1949, following a demand by five (5) Negroes for permission to use the said course, such permission was granted each day for the following six consecutive days.

D. That the said golf course is a self-sustaining project, dependent solely for its existence upon green fees paid by golfers, and that an average of two hundred players per day is necessary to maintain its self-sustaining basis.

E. That following the admission of Negro players, white patrons announced their intention of withdrawing their patronage if they were forced to share such facilities and that in view of the small number of Negro golfers taking advantage of these facilities, it would become necessary for the City of Miami to abandon the golf course unless an alternative regulation for its use was adopted.

F. That thereupon the present policy was adopted limiting Negro players to the use of such facilities on one day of each week, reserving the remaining six days for the exclusive use of white citizens.

G. That since the promulgation of this rule, the number of Negro golfers had not increased sufficiently to warrant an increase in the time allotted to them for the use of these public facilities.

Petitioner thereafter moved for a peremptory writ of mandamus upon the ground that the Return and Answer

had failed to present matters alleged by way of defense which, if proved, would constitute a legal defense. (R. 7-8) Such motion was denied, the alternative writ dismissed and final judgment granted respondent. (R. 7)

Upon appeal to the Supreme Court of the State of Florida, such judgment was affirmed. (R. 19) Upon such appeal, petitioner contended that the rule as promulgated by the duly authorized and acting agent of the City of Miami violated rights guaranteed petitioner by the Fourteenth Amendment to the United States Constitution. In its opinion, the Supreme Court of the State of Florida, after discussing prior decisions of this Court and State courts under the Fourteenth Amendment, held that:

> ". . . It does not appear by the record that the one day allotment of the facilities of the course to the negroes discriminated against the negro race. The days of playing each week were apportioned to the number of white and colored golfers according to the record of the course kept by the respondent. If an increased demand on the part of the negro golfers is made to appear, then more than one day each week will be allotted." (R. 18-19)

Question Presented

DID THE SUPREME COURT OF THE STATE OF FLORIDA ERR IN AFFIRMING THE JUDGMENT OF A TRIAL COURT DENYING RELIEF BY MANDAMUS TO PETITIONER, A NEGRO, WHO SOUGHT T'' OPPORTUNITY TO USE AND ENJOY THE ONLY GOLF FACILITIES MAINTAINED AND OPERATED BY THE CITY OF MIAMI UPON THE SAME BASIS AND PURSUANT TO THE SAME RULES AND REGULATIONS APPLICABLE ALIKE TO ALL CITIZENS.

Reasons Relied On For the Allowance of the Writ

The right of a Negro citizen to the equal enjoyment of public facilities maintained and operated by the State is axiomatic under the laws of the land. The record in the

instant case shows a clear denial of such enjoyment. The Fourteenth Amendment to the United States Constitution provides among other things that no State shall:

> "... deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This provision requires that where a State undertakes to furnish public facilities, it must make such facilities or substantially equal facilities available to all persons within its jurisdiction. The exclusion by the State of any qualified person within its jurisdiction from the use of such facilities while failing to provide otherwise substantially equal facilities within the State for such persons constitutes a denial of the equal protection of the laws in violation of the Amendment. *McCabe* v. *Atchison T. & S. R. Co.*, 235 U. S. 151; *Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337. The principle extends to and requires equality of treatment in all facilities regardless of character. *Kerr* v. *Enoch Pratt Free Library of Baltimore City*, 149 F. (2d) 212. It is equally clear that such facilities must be made available to the Negro citizen at the same time as they are made available to others. *Sipuel* v. *Board of Regents*, 332 U. S. 631.

The logic inherent in the opinion of the Supreme Court of the State of Florida upholding the denial of the use of the facilities involved herein to Negro citizens, upon the ground that a fair proportion had been struck in the rule promulgated for such use, fails to comply with the requirements of the Fourteenth Amendment. The constitutional right is clearly a personal one and its recognition cannot be made to depend upon the number of persons who may be discriminated against. *McCabe* v. *Atchison, T. & S. R. Co.*, *supra*; *Mitchell* v. *United States*, 313 U. S. 80; *Hurd* v. *Hodge*, 334 U. S. 24; *Sweatt* v. *Painter*, — U. S. —.

This Court must take jurisdiction of the instant case so as to require that the State of Florida recognize petitioner's constitutional rights and extend to him and other Negroes similarly situated the use of public facilities on the same basis as they are presently available to white citizens.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 145

JOSEPH RICE,

Petitioner,

vs.

H. H. ARNOLD, AS SUPERINTENDENT OF MIAMI SPRINGS COUNTRY CLUB,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI

JURISDICTION

The petitioner invokes the jurisdiction of this Court under Title 28, United States Code, Section 1254.

STATEMENT OF THE CASE

The petitioner sought (R. 1-2) and obtained an alternative writ of mandamus from the Circuit Court of the Eleventh Judicial Circuit of Florida, In and For Dade County (R. 3), requiring the respondent, as Superintendent of Miami Springs Country Club, to forthwith grant to the petitioner the privilege of golfing on the club course, "during all of the hours in which the said course is open to the public, subject however to any lawful rules and regulations governing the use thereof", or to show cause for his refusal.

The petition for the alternative writ recites that the mentioned Club is owned and operated by the City of Miami; that it is the only recreational facility operated by the City which has a golf course; that the respondent has been delegated authority by the City to prescribe and enforce rules governing the use of the Club (R. 1); that the petitioner is a negro; that on April 27, 1949, the petitioner sought admission to the golf course and that he was on such date refused admission by the respondent because of his color and for no other reason (R. 2).

The prayer of the petition was that the alternative writ be issued requiring the respondent to permit the petitioner to golf on the mentioned course "during all of the hours in which the course is usually open" or to show cause for his refusal (R. 2).

In his response to the writ (R. 4-6) the respondent showed that in accordance with the general policy of segregation of races extant throughout the State of Florida and the City of Miami, he had allotted certain days to the

noted

CLERK'S MEMO

In Re: Rice v. Arnold, No. 145.
October Term, 1950.

The face of the petition and record in this case is stamped "filed June 24" which would indicate that the application was not made within the time provided by law--90 days from March 24th. Actually the papers were received in the clerk's office June 19th together with a deposit to cover the docket fee and cost of printing the petition and record. Under our practice, filing was withheld until the printing could be gotten underway so as to enable counsel to comply with Rule 38, requiring service of a printed copy of the petition and record within 10 days after docketing. Obviously there was a miscalculation by the office as to the final date and the case was not put on the docket until June 24th--two days late. The time question has not been raised by counsel, one of the law clerk's having called it to the clerk's attention. Under similar circumstances the Court has treated the application for certiorari as having been filed in time and considered the case on its merits.

Clerk.

August 4, 1950.

(Copy to each Justice)

exclusive use of the course by negroes and certain days to the exclusive use by white persons, Mondays of each week being allotted to the exclusive use by negroes and the remaining days of the week to white persons. He based his refusal to permit the petitioner to play on April 27, 1949, upon the fact that such date fell on a Wednesday (R. 4).

The respondent thereupon averred that the petitioner was not being denied the use of the facilities of the golf course as alleged in the petition and moved for judgment (R. 6).

The petitioner then moved for a peremptory writ of mandamus, notwithstanding the answer and return (R. 6-7), and upon hearing, judgment was entered for the respondent (R. 7-9).

This judgment was affirmed by the Supreme Court of Florida (R. 14-19)_____Fla._____, 45 So. 2d 195.

QUESTION

THE SOLE QUESTION HERE PRESENTED IS WHETHER THE COURTS OF A STATE, WHICH HAS ADOPTED A POLICY OF SEGREGATION OF RACES, ERRED IN REFUSING TO COERCE THE SUPERINTENDENT OF A MUNICIPAL GOLF COURSE TO REQUIRE HIM TO PERMIT A NEGRO TO UTILIZE THE FACILITIES OF THE COURSE AT ALL TIMES DURING WHICH IT IS OPEN TO THE PUBLIC.

ARGUMENT

Preliminary Statement

It is important to note at the outset that this is a case arising in mandamus, and not in chancery, and is therefore governed by the strict rules relating to the issuance of writs in such actions.

It should also be borne in mind that the petitioner did not, in the State Courts, raise the question as to whether or not the respondent's rule limiting the exclusive use of the course by negroes to one day a week while granting such use to white players on the remaining six days was a fair allotment of time. The only relief he sought in the State Courts was the privilege of using the course at all times during which it is open to the public.

With the above statement in mind, it is necessary to call the Court's attention to an error in the summary statement in the petition where, on page 2, it is stated that the petitioner filed his petition for an alternative writ of mandamus "to require respondent to permit him the use of the said golf course upon the same basis and pursuant to the same rules and regulations as such facilities are made available to other citizens."

Actually, the petitioner sought by the prayer of his petition to golf on the course "during all of the hours in which the course is usually open.".

If that relief which the petitioner now says he sought in the State Courts had in fact been sought, the result might have been different for in his opinion and judgment the Circuit Judge stated (R. 8):

"The question then becomes this: Is the relator entitled to an order permitting him to use the City's sole public golf course at all hours and times when it is open for play?

"The question must be answered in the negative.

"A requirement that some use of the course should be provided for relator is by no means the same thing as a right or privilege for its use at any and all times every day."

Further in his opinion, the Circuit Judge said (R. 9):

"From the nature of this mandamus case, this Court is not concerned with, nor called upon to pass upon any question as to the reasonableness or sufficiency of the one day each week allotted to the members of relator's race to use the course. Any complaint on that score might be the basis and subject of some other suit or proceeding, but relief of that character was not sought here, nor was it included in the command of the alternative writ."

Thus the question stated on page 4 of the petition does not present the real question of law raised by the pleadings and considered by the State Courts, nor does it present the correct question for consideration by this Court for if the petitioner had in fact, in the State Courts, sought the privilege of using the golf course "upon the same basis" as provided for other citizens, it is possible that the courts there might have issued an order requiring a different distribution of times for the use of the course

by negro and white players than that provided in the rule adopted by the respondent.

THE RELATOR IN MANDAMUS MUST RECEIVE ALL OR NONE OF THE RELIEF WHICH HE DEMANDS.

It is settled law in the State of Florida that the command of the peremptory writ must follow that of the alternative writ, neither more nor less than the relief demanded can be granted. In the event full compliance cannot be required of the respondent, then a peremptory writ should not issue. **Tampa Waterworks Co. v. State ex rel. City of Tampa, 77 Fla. 705, 82 So. 230, 231; State ex rel. Bloxham v. Gibbs, 13 Fla. 55, 75, 7 Am. Rep. 233; State ex rel. Ellis v. Atlantic Coast Line R. Co., 53 Fla. 650, 44 So. 213, 223; State ex rel. Hutchins v. Tucker, 106 Fla. 905, 143 So. 754, 757; State ex rel. Moody v. Call, 39 Fla. 165, 22 So. 266, 268; State ex rel. West v. Florida Coast Line Canal & Transportation Co., 73 Fla. 1006, 75 So. 582, 590-591; State ex rel. Gillespie v. Thursby, 104 Fla. 103, 139 So. 372, 377; City of Bradenton v. State ex rel. Oliver, 117 Fla. 578, 158 So. 165, 166; Weeks v. State ex rel. Moore, 132 Fla. 825, 182 So. 280, 281.**

In the case at bar the petitioner did not elect to amend the alternative writ and therefore the Circuit Judge could not have issued a proper peremptory writ, requiring the respondent to permit the petitioner to utilize the facilities of the golf course at all times during which it is open, without requiring the respondent to ignore and repudiate the settled policy of segregation extant throughout the City and State.

The Circuit Judge could not have required the respondent merely to enlarge the time set apart for the exclusive use of the course by negroes without violating the established rules of pleading and practice pertaining to mandamus.

THAT THERE IS A GENERAL POLICY OF SEGREGATION OF RACES EXTANT IN THE STATE OF FLORIDA IS UNDISPUTED.

The petitioner did not deny the respondent's allegation that a policy of segregation of races is extant in the State of Florida and this fact was conceded by his counsel in argument before the Circuit Court (R. 8).

In any event, the allegation must be taken as admitted by the filing of the petitioner's motion for peremptory writ notwithstanding the answer and return.

Such a policy finds sanction in decisions of The Supreme Court of Florida in **Patterson v. Taylor, 51 Fla. 275, 40 So. 493; Crooms v. Schad, 51 Fla. 168, 40 So. 497; Sanders v. City of Daytona Beach, 95 Fla. 279, 116 So. 23;** and in the instant case, **Rice v. Arnold, ___ Fla. ___, 45 So. 2d 195;** a policy which has been approved by this Court in **Plessy v. Ferguson, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256.**

We do not understand the decision of the last cited case to have been overruled by **Henderson v. U.S., ___ U.S. ___, 94 L. Ed. 790; McLaurin v. Oklahoma State Regents, ___ U.S. ___, 94 L. Ed. 787; or Sweatt v. Painter, ___ U.S. ___, 94 L. Ed. 783.**

CONCLUSION

We respectfully submit that the decision of the Supreme Court of Florida is not contrary to the decisions announced by this Court and that no new or novel question meriting consideration by this Court is raised by the petition, and therefore respectfully suggest that the petition for writ of certiorari should be denied.

Respectfully submitted,

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By.....
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I HEREBY CERTIFY that a copy of the foregoing Respondent's Brief in Opposition to Issuance of Writ of Certiorari was mailed to each of the following attorneys for petitioner:

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this the ..... day of July, 1950.

.....

Of Counsel for Respondent.